IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. _____

W. D. HADEN COMPANY,

Petitioner,

v.

THE MATHIESON ALKALI WORKS, INC.,

Respondent.

BRIEF FOR PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

THE OPINION OF THE COURTS BELOW.

The opinion of the District Court is reported in *W. D. Haden Company* v. *The Mathieson Alkali Works, Inc.* (R. Vol. I, p. 64, 30 Fed. Supp. 617). The opinion of the Circuit Court of Appeals for the Fifth Circuit is reported in *W. D. Haden Company* v. *The Mathieson Alkali Works, Inc.* (R. Vol. IV, p. 2652, 122 Fed. 2d 650).

JURISDICTION.

The judgment of the Circuit Court of Appeals for the Fifth Circuit is dated September 13, 1940 (R. Vol. IV, p. 2655). The statute under which jurisdiction is invoked is Section 240 (a) of the Judicial Code (28 U. S. C. 347, as

amended). Among the cases in this Court which are l
lieved to sustain the jurisdiction are:

Paramount Publix Corporation v. *American T*
Ergon Corporation, 293 U. S. 528, 548, 629;
Sup. Ct. 101, 139;

The Schriber-Schroth Company v. *The Clevela*
Trust Company et al., 304 U. S. 587; 58 Su
Ct. 1052; and

Carbice Corporation of America v. *American Pa*
ent Development Corporation, 293 U. S. 27;
Sup. Ct. 334.

STATEMENT OF THE CASE.

The facts so far as this application is concerned a
sufficiently stated in the petition.

SPECIFICATION OF ERRORS.

The errors which Petitioner will urge if the writ
certiorari is granted are that the Circuit Court of Appea
for the Fifth Circuit erred:

1. In affirming the decree of the District Court holdi
the Respondent does not infringe patent No. 1,896,403.

2. In reading a limitation contained in some of t
claims in the patent into claim 2 of the patent where
such limitation appears.

ARGUMENT.

Your Petitioner will not burden this Court with a d
tailed analysis of the merits of this controversy. In fa
your Petitioner will not attempt to elaborate complete
on the details of the proper factual background whi
should be used in an interpretation of the claims of t
patent in suit.

1.—The Court of Appeals disregarded a fundamental principle of patent law established by this Court when it read the "crushing for size" limitation into claim 2 of the patent and held that the claim was not infringed because of this limitation.

There is a vast difference in purpose in the two crushing steps of the Haden process. The "crushing for size" step which appears, for example, in claim 1 has the purpose of reducing the shell to a "substantially uniform size" to prevent "underburning" and "overburning". The "crushing for cleansing" limitation appearing in claim 2 (which claim does not have the "crushing for size" limitation) is to open up shell laminations, pockets, and crevices which contain such impurities as silt and sand so that these may be removed from the shell and hence further insure against impurity in the resulting lime product. Both of these steps are important features of the Haden process but under all conditions it is not essential to practice both of them in order to practice the Haden invention.

As admitted by Respondent's chief engineer during trial, the longer the kiln in which the shells are burned, the greater the range may be between the minimum size of shells and the maximum size of shells (R. Vol. III, p. 1668). Thus, it is conceivable that given a certain type of reef shell which comprised shell particles between a certain maximum and a certain minimum, it might be possible to design a kiln long enough to take the maximum size of shell in this raw material and thus eliminate the necessity of "crushing for size". Under these circumstances it would not be necessary for one practicing the Haden invention to use this step.

It might also be conceivable, although improbable, to find a body of this reef shell having a very wide range between its smaller and larger particles but, because of some fluke of nature, having a rather smooth surface with few laminations, if any, and consequently little, if any, entrapped dirt. Under these assumed improbable circum-

stances it might not be necessary to practice the "crushin for cleansing" part of the Haden process although th larger particles might have to be broken down, henc necessitating the "crushing for size".

It is for this reason that the Haden patent, like al patents, contains claims (claim 1) limited to the "crush ing for size" step without any mention of the "crushin for cleansing" step. The patent also contains claim which does not mention "crushing for size" but define in particularity the "crushing for cleansing" limitation

Haden discovered the advantages of practicing both o these crushing steps according to the particular raw mate rial being used, and therefore the Patent Office recognized the justice of granting him specific protection for both steps separately in combination with the burning opera tions necessary to convert the processed shell to lime. I is only for this reason that claims of the type of claims and 2 appear in the Haden patent. Obviously, if the Pat ent Office had not believed that both of these steps in com bination with the other steps of the process were patent able, no such claims as these would have appeared in the Haden patent. Possibly, there would have been no Haden patent; possibly, the Patent Office would have insisted upon a claim defining the combination of both steps of crushing.

The Circuit Court of Appeals admitted that claim 2 did not contain this "crushing for size" limitation: "Claim 2 is the only one which does not mention sizing the shells." (R. Vol. IV, p. 2654.) But, said the Court, "Claim 2, which includes crushing of oyster shells must be read in connection with the other claims." (R. Vol. IV, p. 2655.) It continued by holding that there was no "crushing for size" in the Respondent's process, and, consequently, claim 2 as well as the other claims in the case could not be infringed.

That it was necessary to read this "crushing for size" limitation into claim 2, in order to hold the claim uninfringed, is emphasized by the holding of the District Court that defendant does practice the "crushing for cleansing" step as recited in the claim. The District Court held that defendant's apparatus and various operations, before burn-

ing the shell, crushes and breaks up the shell. It held that this crushing and breaking serves to open up the laminations and crevices on the surfaces of the shell to remove dirt deposits that are entrapped therein. The District Court in speaking of this crushing stated (Finding 20, R. Vol. I, p. 89): "It is also true that this procedure likewise serves to open some of the surface laminæ and to remove therefrom such impurities as can be reached by washing in the screens."

Certainly we have here the lifting of an entire step from one claim and placing it in another claim where it does not exist purely to limit the latter claim in such manner that it will not be infringed. This is directly *contra* to the well-established rule of this Court that each claim must stand on its own feet, that the interpretation of each claim is independent and cannot be confused with the problems incident to a consideration of the other claims, that the validity of a claim cannot be sustained by reading into it the limitations of another claim and that the infringement of a claim must be determined in the light of the terminology of that claim without help or hindrance from other claims in the Patent.

Your Petitioner submits that this is an important principle of law necessitating a definite ruling by this Court for the protection of the public. To continue the principle enunciated by the Circuit Court of Appeals for the Fifth Circuit would be a very serious blow to the patent system, and, more important, an additional burden on the public in its effort to determine the scope of patent protection.

2.—Due to the peculiar circumstances existing in this industry there is no possibility of any conflict of decisions between the Circuit Court of Appeals for the Fifth Circuit and any other Court of Appeals.

As previously explained the Haden process is particularly designed for the conversion of reef oyster shells into a high grade chemical lime. Although such reefs exist in San Francisco Bay, they are comparatively insignificant in

extent, and there is only one company using this process in that locality; that company has recognized the value of the Haden invention for it is a licensee under the Haden patent. The other deposits of these shells are located along the Gulf Coast which is entirely within the Fifth Circuit. It is a tribute to the Haden invention that since the building and operation of the Haden plant, which made the Haden process well known, a number of chemical companies have constructed large plants along the Gulf Coast for the practice of various chemical processes needing large quantities of high grade lime. For example, the Respondent built its plant at Lake Charles at a cost of over eight million dollars (R. Vol. III, p. 1796) after making a very careful analysis of the Haden process and availing itself of all of the engineering experience of your Petitioner. Because of the ruling of the Circuit Court of Appeals for the Fifth Circuit in this case Haden is prevented in practicality from proceeding against any of these other companies who are now availing themselves of the fruits of the Haden invention without giving any compensation therefor.

Accordingly, for the reasons set forth hereinabove, it is respectfully submitted that this case justifies this Court in exercising its discretionary power to grant a writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit to review the judgment in this case by that Court.

Respectfully submitted,

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January 12, 1942